HENG WAN CO. LTD. v. SELANGOR RICE MILL CO. LTD.

[O.C.J. (Gill J.) March 11, 1967]

[K.L. — Civil Suit 671 of 1963]

Contract — Option to purchase — Whether there was concluded contract.

Principal and Agent — Limited company — Ostensible authority of agent of.

The plaintiffs were dealers in sugar and the defendants were dealers in rice. The plaintiffs alleged that the defendants had entered into a contract through their factory manager with the plaintiff company to purchase and accept from the plaintiffs 500 bags of sugar and that they failed to take delivery according to the contract. In this action the plaintiff company claimed damages for breach of contract. There was conflicting evidence as to whether a contract had been entered into between the two companies through their agents. The defendant company gave evidence to the effect that their factory manager had no authority to purchase goods or place orders or otherwise enter into commitments on behalf of the company and that sugar was not used by the defendants in the milling of rice which was their main business.

Held: (1) there was no evidence to show that there had been a contract for the sale and purchase of sugar;

(2) assuming that there was a concluded contract, the defendant company could not be held liable on it because the factory manager had neither express nor implied authority to act as agent for the defendant company to enter into such a contract.

Case referred to:—

(1) *Rama Corporation Ltd.* v. *Proved Tin and General Investment Ltd.* [1952] 2 Q.B. 147.

CIVIL SUIT.

N. A. Marjoribanks for the plaintiffs.

J. H. Yong for the defendants.

Gill J.: This is an action for damages for breach of a contract in Chinese writing dated the 25th of May, 1963, whereby the defendants are alleged to have agreed to purchase and accept from the plaintiffs 500 bags of sugar to be delivered by the plaintiffs to the defendants at the plaintiffs' godown at Klang by the 27th of May, 1963, at a price of $61.00 per picul payable in cash on delivery. The amount claimed as damages is $14,898, being the differences between the contract price and the price at which the plaintiffs were obliged to sell the sugar after the defendants failed to take delivery of it as agreed.

There are two versions as to how the alleged contract came into existence. The story of Yeap Geok Hwai (P.W.1), a director of the plaintiff company, is that on 25th May, 1963 he went to the defendants' office at Petaling Jaya with his salesman named Chia Ah Hin to find out the price of rice. Having got there, he met Chua Kia Hong, the manager of the defendant company. They had a discussion about the rice market, after which Chua Kia Hong asked him if he had any sugar for sale. He said that he had United Kingdom sugar for sale, and after some discussion he sold Chua Kia Hong 500 bags of sugar at $61 per picul. The arrangement was that the defendants would take delivery of the sugar at Klang on 27th May, 1963. He wrote out and signed an agreement in Chinese in duplicate. Chua Kia Hong stamped with the rubber stamp of the company and signed the duplicate copy of the agreement, which was handed to him, and kept the original. The defendants did not turn up at Klang on 27th May, 1963 to take delivery of the sugar. In answer to telephone calls to them, asking them to take delivery of the sugar, the defendants said that their lorries had broken down. The market price of sugar on 27th May, 1963 had gone down by two or three dollars per picul and there were no buyers. On 29th May he caused his solicitors to write to the defendants to ask them to take delivery of the sugar by 4 p.m. on 31st May, 1963, but the defendants failed to do so. He therefore sold the 500 bags of sugar in June 1963 to different dealers at the best price he could obtain in the market.

The story of Chua Kia Hong (D.W.3), on the other hand, is that when Yeap Geok Hwai came to see him on the afternoon of 25th May, 1963 he said that he had 500 bags of sugar to sell at $61 per picul and asked him to assist him in selling it. He did not agree to buy the sugar from Yeap Geok Hwai. Yeap Geok Hwai then took a piece of paper from his company's writing pad and wrote out an option for sale. He signed the carbon copy at Yeap's request. Yeap retained the carbon copy and left the original with him. His job with the defendant company was that of factory manager and he had never bought anything for his company. After 25th May, 1963 he got no telephone calls asking him to go to Klang to collect sugar, and it was not true that he said in reply to telephone calls that his company's lorries had broken down. In fact his company did not own any lorry at the time.

Chia Ah Hin (P.W.2) gave evidence to say that he went with Yeap to the defendant company where they saw Chua Kia Hong with whom some discussions took place about the sale of sugar by the plaintiff company. He went on to say that he was present when a document was drawn up in duplicate and signed both by Yeap and Chua. His story as to the signing of the documents, however, differed materially from the story of Yeap and Chua. I therefore formed the opinion that he was not telling the truth. In my opinion he was not present at the discussions and the document was not prepared and signed in his presence.

Evidence was produced on behalf of the defendants that Chua Kia Hong was appointed as their factory manager with effect from 1st February, 1963. The resolution appointing him (exhibit D.6) stated that he was authorized to sell the company's products such as milled rice

and by-products, but that he would not be entitled to purchase goods or place orders or otherwise enter into commitments on behalf of the company. There was evidence to show that sugar was not used by the defendant company in the milling of rice which was their main business.

Taking the evidence as a whole, I am satisfied that what Chua Kia Hong has told the court about the circumstances under which the Chinese document came to be written, is the truth. I do not accept Yeap's story that Chua initiated the negotiations as regards the sale of sugar. As the defendant company did not ordinarily deal in sugar, there was no reason for Chua to ask if Yeap had any sugar to sell. It was Yeap who had a large stock of sugar, so that it is more likely that he broached the question about the sale of sugar. I accept Chua's story that he never agreed to buy any sugar. This, in my opinion, is amply borne out by the document in question (exhibit P.1) which was written out by Yeap himself and a translation of which reads as follows:

"Willing to sell to Selangor Rice Mill Co., Ltd. European sugar, dry brand, (English sugar) 500 bags, at $61 per picul, in Klang to deliver the goods. Agreed on Monday can take complete delivery provided cash paid. This is special proof."

This document, as I understand it, was an option to sell as alleged by Chua. What Yeap was saying in that document was that he was willing to sell the sugar at $61 per picul and that delivery of it could be taken on Monday provided the price was paid in cash. It was nothing more than an offer to sell and the offer was kept open until Monday, 27th May, 1963. There is no evidence that this offer was ever accepted by Chua Kia Hong or the defendant company. There was thus no concluded contract, and the action therefore is misconceived.

Assuming that I am wrong in holding that there was no concluded contract, the other question which I have to consider is whether this contract is binding on the defendant company. Here I have to consider whether Chua Kia Hong had any authority, whether express or implied, to act as the agent of the defendant company in entering into a contract for the purchase of sugar on behalf of the company. Yeap Geok Hwai has stated in evidence that neither he nor anybody from his company has ever studied the articles or the memorandum of association of the defendant company. There was no evidence to show that under its articles or memorandum of association the company had any power to appoint or delegate authority to agents. In *Rama Corporation Ltd.* v. *Proved Tin and General Investments Ltd.*[1] it was held that a person who at the time of entering into a contract with a company has no knowledge of the company's articles of association cannot rely on those articles as conferring ostensible or apparent authority on the agent of the company with whom he dealt, and that the doctrine of constructive notice of a company's registered documents is a purely negative one which does not operate against the company but only in its favour.

The evidence is that Chua Kia Hong was only a factory manager and not a general manager of the defendant company. The defendants did not set him up as a general manager. Even if they did, he could only be an agent for buying such things as were necessary for the business of the company. The evidence is that sugar was not necessary for the business of the company. In this connection *Chitty* on Contracts (22nd edition) Volume II at page 21, paragraph 40, says as follows:—

"If a servant or agent is accredited and invested by his master with authority to act for him in all his business of a particular kind; or if the agent, being himself engaged in a particular trade or business, is employed by the principal to do certain acts for him in the ordinary course of that trade or business, he will in each case be held to be, with reference to his employment, a *general* agent; and — the public having no means of knowing what are, in any particular case within the general scope of the agent's powers, the wishes and directions of the principal — the latter will be liable, even though his orders are violated. In such a case the principal, having for his own convenience induced the public to consider that his agent was possessed of *general* powers, is bound by the exercise on the agent's part of the authority which he has thus allowed him to assume. But this is not to say that the principal is bound by every act of the agent; the agent must be doing something which is incidental to the ordinary conduct of the trade or business or whatever is necessary for the proper and effective performance of his duties; acts outside the ordinary scope of his employment or duties will not bind his master."

The conclusion at which I have arrived is that the document upon which this claim is based was not a concluded contract for the sale and purchase of sugar. Even if it was a concluded contract, it does not bind the defendant company because Chua Kia Hong had neither express nor implied authority to act as agent for the defendant company to enter into such a contract. The claim is therefore dismissed with costs.

Claim dismissed.

Solicitors: *Lovelace & Hastings; Dato' S. M. Yong & Co.*

CHIN KEOW v. GOVERNMENT OF MALAYSIA & ANOR.

[P.C. Viscount Dilhorne, Lord Hodson, Lord Guest, Lord Upjohn and Sir Hugh Wooding) April 13, 1967]

[Privy Council Appeal No. 11 of 1966]

Damages — Breach of duty of care.

Negligence — Professional negligence — Medical practitioner — Standard of care — Prescribing procaine penicillin without any enquiry into patient's history — Whether breach of duty of care.

In April, 1960, an amah employed in the Social Hygiene Clinic at Sultan Street, Kuala Lumpur spoke